

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.416 OF 2015
WITH
CIVIL APPLICATION NO.537 OF 2015
IN
APPEAL FROM ORDER NO.416 OF 2015**

Mr.Keshav Kanji Shah @ Gindra ..Appellant/Applicant
V/s.

Municipal Corporation of Gr.Mumbai ..Respondent

Mr.Amogh Singh a/w Mr.D.P. Singh i/by Mr.Anil Yadav for the
Appellant.

Mrs.M.M.More for Respondent-BMC.

CORAM : M. S. SONAK, J.

DATE : 06 JANUARY 2017.

P.C.

1. Heard Mr.Amogh Singh for the appellant and
Mrs.M.M. More for the respondent-corporation.

2. This appeal is directed against an order dated
25-03-2015 made by the City Civil Court, Dindoshi (Trial
Court) partly declining interim reliefs to the appellant. The
operative portion of the impugned order reads thus.

“1. Defendant/MMC is restrained from

demolishing the ground floor of the suit premises namely, Shop No.9 and 10 disposal of the suit.

2. It is made clear that there will be no impediment for defendant/MMC to take action against first floor of the suit premises as per order dated 18/3/2015 on impugned Notice.

3. N/M be registered and made returnable on 24/7/2015. Adjourned for N/M reply to 24/7/2015.”

3. This Court, upon hearing the learned counsel for the parties, on 27-03-2015 restrained the respondent-corporation for taking any coercive action. At paragraph 7 of the order dated 27-03-2015, this Court has observed thus:-

“7. Considering the submissions made by the learned counsel for the applicant, order passed by Trial Court and the order dt.18-03-2015 passed by Designated Officer, Asst.Engineer (Bldg.) R/South Ward, I am of the opinion that applicant has made out a case for ad-interim relief. Hence, following order:

a) Rule.

b) Rule made returnable after 12 weeks.

c) In addition to usual mode of service, Applicant is permitted to serve respondents by private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect.

d) If bhatta charges are not paid within stipulated time, the Civil Application shall stand dismissed without further reference to the Court.

e) Till further orders respondent Corporation is restrained from taking any coercive action pursuant to the notice under section 351 dated Nil September 2014 and as per order dated 18/3/2015 passed by Designated Officer, Asst. Engineer (Bldg.) R/South Ward.

f) The learned counsel for the respondent waives service.”

4. The ad-interim relief in the aforesaid terms, is in operation since 27-03-2015. The Notice of Motion taken out by the appellant is yet to be heard and disposed of by the learned Trial Judge. In such circumstances, it would be in the interest of justice if directions are issued for the expeditious disposal of the Notice of Motion itself.

5. Ms. More the learned counsel for respondent-corporation points out that the structure on the first floor is totally unauthorized and therefore, there is no necessity of grant of any ad-interim protection in respect of the said structure. She points out that even the structure on the ground

floor are not authorized and that notice under Section 351 was legal and valid.

6. Now that the Notice of Motion will itself be taken up for consideration, all these contentions cannot be taken into consideration by the learned Trial Judge. Since, the ad-interim relief is in operation since 27-03-2015, it will not be appropriate to vary the same at this stage. However, Ms. More is right in her submission that directions are liable to issue for expeditions disposal of the Notice of Motion, without being influenced by any observations made by this Court with the order dated 27-03-2015 and for that matter the present order.

7. Accordingly, this appeal is disposed of with the following order:-

ORDER

(a) The ad-interim order dated 27-03-2015 will continue until the disposal of the Notice of Motion.

(b) Further, the appellant is also directed to maintain status-quo in respect of the suit structure, until the disposal of

the Notice of Motion.

(c) The learned Trial Judge is directed to dispose of the Notice of Motion as expeditiously as possible and in any case within a two months from today.

(d) In disposing of the Notice of Motion the Trial Judge need not be influenced by any observations made in the impugned order, the order dated 27-03-2015 made by this Court as well as the present order. Such Notice of Motion will be considered and disposed of and in accordance with law and on its own merits.

(e) All concerned to act on the basis of an authenticated copy of this order.

(f) Parties to appear before the learned Trial Judge on 16 January 2017 at 11.00 am and file authenticated copy of this order so that the Trial Judge is in position to comply with the directions of the disposal of the Notice of Motion within two months from today.

(M. S. SONAK, J.)